



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Kevin McGraw
Assistant City Attorney
City of Waco
Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR94-361

Dear Mr. McGraw:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24710.

The City of Waco (the "city") received an open records request for the following:

- (1) the personnel file of Clarence [Stevenson]
- (2) Maintenance, inspection, service records and other records pertaining to the vehicle involved in the October 16, 1991 accident with [Mr. Stevenson]
- (3) Any investigation done by the city into this accident

The requested records have been submitted to this office for review. You assert that these records are excepted from public disclosure under section 552.103.

Section 552.103(a) provides that information is excepted from public disclosure if it is information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state

or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

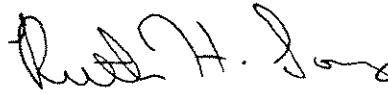
Section 552.103 was designed to protect the litigation interests of a governmental body rather than the rights of third parties. Open Records Decision Nos. 588 (1991) at 4; 551 at 3; 542 at 4 (1990). The exception is not applicable where the litigation involves only private parties. Open Records Decision No. 575 (1990) at 2. Your letter indicates that Mr. Stevenson was a city employee who was hit by a city-owned garbage truck while he was on the job. Documents you have sent to this office indicate Mr. Stevenson has filed suit against Maxon Industries and Bond Equipment Company, Inc., alleging that these companies bear responsibility for his injuries. You indicate that the city is not a party to that lawsuit. Since it does not appear that the city's litigation interests are implicated by this lawsuit, the requested information is not excepted from disclosure under section 552.103(a).

However, we note that certain information in the records that we reviewed may have to be withheld from disclosure. The records at issue disclose Mr. Stevenson's home address and home telephone number. Section 552.024 provides the procedure by which state employees may keep their home addresses and home telephone numbers from being publicly accessible. If Mr. Stevenson, as of the time of the request, had elected under section 552.024 to keep his home address and home telephone number information private, that information may not be disclosed.

The submitted records also disclose Mr. Stevenson's social security number. Social security numbers must be withheld under federal law if obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. If not so obtained or maintained, social security numbers may not be withheld from disclosure under section 552.101. Open Records Decision No. 622 (1994) (enclosed). It is not apparent to this office, nor do we have any way of knowing, that the social security number at issue was obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis on which to conclude that the information at issue is confidential under title 42 of the United States Code, section 402(c)(2)(C)(vii), and therefore excepted from public disclosure under section 552.101 of the Open Records Act. However, please note that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing Mr. Stevenson's social security number, the city should ensure that this information was not obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KHG/rho

Ref.: ID# 24710

Enclosures: Open Records Decision No. 622
Submitted documents

cc: Mr. Jerry P. Campbell
Law Offices of Naman, Howell, Smith & Lee
P.O. Box 1470
Waco, Texas 76703-1470
(w/o enclosures)